IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/04/2004

CORAM

THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

S.A.NO.1351 OF 1993

1. Kandasamy (deceased)
2. Annadurai
3. Kamu Ammal
4. Meenakshi
5. Nagaraj
6. Vasanthi
(Appellants 3 to 6 are
brought on record as LRs
of the deceased 1st appellant
as per order dated 12.6.01
in CMP.1649 of 1999) .. Appellants

-Vs-

1. Rangasamy
2. K. Muthu
3. Palanisamy
4. Natarajan .. Respondents

This second appeal is preferred under Section 100 of CPC against the judgment and decree in AS No.51 of 1993 dated 30.6.1993 on the file of the learned Second Additional Subordinate Judge, Coimbatore reversing the judgment and decree in OS No.2219 of 1986 on the file of the learned II Additional District Munsif, Coimbatore dated 25.2.1993.

!For Appellants : Mr.K.Muthukumaraswamy
for Mr.S.Kadarkarai

^For Respondents : Mr.P.Murugaiyan

:JUDGMENT

The defendants in a suit for declaration and consequential permanent injunction, whose defence plea though accepted by the trial court, on rejection of the same by the first appellate Court are the appellants before this Court.
2. The following short facts are noticed in the pleadings of the parties:

The plaintiffs are the owners of the sites bearing site Nos.27, 28, 41, 6 and 47 in Thayammal Layout in S.F.No.240/A1 in Kurichi Revenue Village in Podanur, Coimbatore Taluk. They have purchased the same under different sale deeds. The said sites were purchased by the plaintiffs for the purpose of putting up residential houses. A layout was formed and was duly approved. The present suit was filed with regard to the reserved sites shown in the plan produced as document No.1. After the purchase of the property, the plaintiffs and the other owners of various sites have put up construction and they are residing therein. At request of the plaintiffs and the other residents in the said layout, the local panchayat has put up flush out latrine in the portion of the reserved site. The defendants are the father and son and they have no right to the reserved sites. They were making a false claim to the suit properties and the defendants were also making an attempt to enclose the same by putting up an artificial fence. They also prevented the plaintiffs and the others from using the toilet constructed by the local panchayat, and hence, there arose a necessity to file the suit.

3. The defendants resisted the suit by stating that the plaintiff, who were unsuccessful in their attempt in purchasing the suit properties, have come forward with this suit in their individual capacity and they cannot ask for prayer in the absence of residents in Thayammal Layout and in the absence of the requirement under Order 1 Rule 8 of CPC; that Kurichi Town Panchayat, which has constructed latrine in a portion of the suit property and the Town Pl anning Authorities are the proper and necessary parties to this suit and the suit is bad for non joinder of the said parties; that the plaintiffs have no manner of right or interest in the suit property, and hence, the suit was to be dismissed.

4. The trial court framed necessary issues, tried the suit and dismissed the same. Aggrieved, the plaintiffs took it on appeal, wherein the judgment of the trial court was reversed by the first appellate court. Hence, the aggrieved defendants have brought forth this second appeal.

5. At the time of admission, the following substantial questions of law were formulated by this Court for consideration:

1) Whether the lower appellate court is correct in law in holding that the purchasers of the plots in the lay-out are having title to the suit property though there is no document transferring the title with respect to the suit property?

2) In view of evidence on the side of the plaintiffs regarding possession whether the lower appellate court is correct in law in granting decree for injunction?

6. After careful consideration of the rival submissions and scrutiny of the materials available, this Court is unable to notice any merit in this appeal.

7. Admittedly, the plaintiffs purchased different sites bearing site Nos.27, 28, 41, 6 and 47 in Thayammal Layout in S.F.No.240/A1 in Kurichi Revenue Village in Podanur, Coimbatore Taluk. Pursuant to the sale deeds they have got possession of their respective plots. It is also not in controversy that while the properties in that survey field made different layouts and approval was also sought for under Ex.B.4 , certain properties were actually kept apart for the purpose of common enjoyment and use and they were shown in the approved plan for park and other purposes, which are mentioned therein. While so, the original owners of the property, who made layout, sold those

properties, which were kept in common to the defendants 1 and 2. Under the stated circumstances, there arose a necessity for the plaintiff to file the suit.

8. The trial court, on an erroneous view, has dismissed the suit stating that the plaintiffs, who sought the relief of declaration, were not entitled for the same, since they did not have any right in those plots as per the sale deeds in their favour, but the said judgment was set aside by the first appellate court. The first appellate court,pointing to the sale deeds, has stated that the vendees under these sale deeds have got right over the properties, which kept in common. The approved plan would clearly indicate that those properties were set apart for the common use and enjoyment. While so, it would be futile on the part of the defendants to contend that the plaintiffs were entitled to only their respective plots given to them under the sale deeds and their vendors had right to deal with the properties, which were set apart for the common use and enjoyment. The first appellate court has discussed the evidence in extenso and has rightly found that the original owners had no right to sell those properties in favour of the defendants, which are kept in common enjoyment.

9. The contention of the appellants/defendants that the layout was approved in the year 1979 and the properties now sold to the defendants were kept vacant all along these years and they were not used for park and other purposes and the panchayat has also not taken any steps to take the properties, and hence, they sold the properties cannot be countenanced. The first appellate court has taken a correct view that the original owners, after getting approval, are not entitled to deal with the properties kept for common enjoyment and use. Hence, this Court is of the view that without any hesitation whatsoever, the judgment of the first appellate court has got to be affirmed.

10. In the result, this second appeal fails and the same is dismissed, leaving the parties to bear their costs.

Index : Yes
Internet : Yes

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To

1. The Subordinate Judge, Coimbatore
2. The II Additional District Judge,
Coimbatore

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